

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY MALCOLM TOJE,

Defendant-Appellant.

UNPUBLISHED

May 19, 2005

No. 252370

Wayne Circuit Court

LC No. 03-005726-01

Before: Murphy, P.J., and White and Smolenski, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of one count of third-degree criminal sexual conduct, MCL 750.520d(1)(a), and one count of second-degree criminal sexual conduct, MCL 750.520c(1)(a).¹ The trial court sentenced defendant to concurrent terms of two to fifteen years' imprisonment on each count. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erroneously concluded that it was required by statute to impose a prison sentence for his third-degree criminal sexual conduct conviction. We disagree. The trial court sentenced defendant within the sentencing guidelines range. Defendant has not challenged the trial court's scoring of the guidelines on appeal or alleged that the trial court relied upon inaccurate information in determining his sentence. Accordingly, we must affirm defendant's sentence for third-degree criminal sexual conduct. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004).

Defendant also argues the trial court should have departed downward from the guidelines in imposing sentence. We disagree. The trial court did not abuse its discretion in adhering to the

¹ Because the trial court found defendant guilty of this offense despite its own finding that the victim was fifteen at the relevant time, we question the validity of this conviction. However, neither party raised the issue on appeal.

sentencing guidelines. *People v Hicks*, 259 Mich App 518, 536; 675 NW2d 599 (2003).

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Michael R. Smolenski